Case 2:14-cv-01672-JCM-NJK Document 1 Filed 10/11/14 Page 1 of 10

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2	LAW OFFICES OF MICHAEL P. BALABAN 10726 Del Rudini Street		
3	Las Vegas, NV 89141 (702)586-2964		
4	Fax: (702)586-3023		
5	Attorney for Plaintiff		
6			
7			
8			
9	UNITED STATES DISTRICT COURT		
10	DISTRICT OF NEVADA		
11			
12	MARK EVAL,	COMPLAINT FOR DAMAGES AND OTHER RELIEF BASED UPON:	
13		1. DISABILITY DISCRIMINATION AND	
14	Plaintiff,	FAILURE TO ACCOMMODATE IN VIOLATION OF THE AMERICANS WITH	
15	vs.	DISABILITIES ACT 2. INTERFERENCE AND RETAILIATION IN VIOLATION OF THE FAMILY AND	
16	CLARK COUNTY, a political subdivision, and	IN VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT 3. WRONGFUL DISCHARGE IN	
17	municipality including its department, CLARK (COUNTY SCHOOL DISTRICT,	VIOLATION OF PUBLIC POLICY	
18	Defendant.	JURY DEMAND	
19	Defendant.		
20)		
21)		
22	Plaintiff MARK EVAL ("Plaintiff" or "Eval") alleges as follows:		
23	1. This action is brought pursuant to	the Americans With Disabilities Act of 1990, 42	
24 25	U.S.C. § 12101, et seq. (hereinafter "ADA") a	as it involves a claim by Plaintiff for disability	
26	discrimination and failure to accommodate hi	is disabilities and terminating him due to his	
27	disabilities in the workplace which is governed by	y the ADA.	
28	2. This action is also brought pursuant the Family and Medical Leave Act of 1993, 29		
20	U.S.C. § 2601, et seq. (hereinafter "FMLA") and State of Nevada public policy making it illegal to		
		1	

retaliate against an employee for filing a worker's compensation claim. Jurisdiction is predicated under these code sections as well as 28 U.S.C. § 1331 as this action involves a federal question.

- 3. At all relevant times, Defendant CLARK COUNTY, a political subdivision, and municipality including its department, CLARK COUNTY SCHOOL DISTRICT (hereinafter "Defendant" or "CCSD") employed fifteen (15) or more employees on each working day in each of 20 or more calendar weeks in the current or preceding calendar year from which the discrimination took place, and they are therefore subject to the provisions of the ADA.
- 4. The events or omissions giving rise to Plaintiff's claim occurred in this judicial district, thus venue is proper here pursuant to $28~USC~\S1391(b)(2)$, and the ends of justice so require.

PARTIES

- Plaintiff, Eval, is a citizen of the United States and a resident of the State of Nevada, County of Clark and City of Logandale Vegas.
- 6. Plaintiff is informed and believes and thereon alleges that at all relevant times giving rise to the claims asserted, Plaintiff was employed in Las Vegas, Nevada by Defendant CCSD.
 - 7. CCSD is an employer within the meaning of $42 USC \S 12111(5)(A)$.

EXHAUSTION OF REMEDIES

8. Plaintiff timely filed a "Charge of Discrimination" with the Equal Employment Opportunity Commission ("EEOC") and was issued a Notice of Right to Sue by the EEOC on July 14, 2014, a copy of which is attached to Complaint as Exhibit "A".

FIRST CAUSE OF ACTION

(For Disability Discrimination and Failure

to Accommodate under the ADA)

9. Plaintiff Eval incorporates the allegation set forth in paragraphs 1 through 8, inclusive, as if fully set forth herein.

- 10. On or about October 8, 2001, Plaintiff was hired by CCSD and at the time of his termination he held the position of Head Custodian I.
- 11. On April 23, 2012 Eval suffered an injury to his left leg and left calf at work when he tried to help a truck driver bring a pallet of paper weighing approximately 2,300 pounds into an entrance at the school he worked at. The pallet got stuck on the carpet in the entrance and when Eval helped the truck driver push the pallet into the entrance he heard a "pop" in his left calf and felt a sharp pain in the calf.
- 12. Eval was diagnosed with among other things, left calf sprain and strain, chronic left calf pain and eventually granted a permanent partial disability award of four (4%) percent on a full body basis.
- 13. From April 24, 2012 until July 18, 2012 Plaintiff was unable to work and was granted Family Medical Leave.
- 14. Effective August 1, 2012, Eval was approved for a Workers' Compensation Leave of Absence without pay.
- 15. On October 11, 2012, Plaintiff's treating physician released Eval back to full duty no restriction but Plaintiff did not get notification of this release back to work until October 18, 2012.
- 16. On October 22, 2012, Eval attempted to go back to work full duty, but was unable to use the backpack vacuum that straps onto your back to vacuum floors in the school. He was unable to use this vacuum because it weighted about 35 lbs. and resulted in Plaintiff being unable to keep his balance while using the vacuum.
- 17. Thereafter Eval applied for a Medical Leave of Absence without pay per Clark County School District Regulation 4351.
- 18. Then on November 7, 2012, Plaintiff received a letter from CCSD notifying him that he was involuntarily resigning and as such was being recommended for dismissal. Eval refused to sign this letter.

- 19. After Eval received the November 7, 2012 letter he called Connie McDuffie in the Human Resources and asked her why he received this letter given the fact that he already applied for a extended medical leave.
- 20. McDuffie told Eval to just ignore the letter because Plaintiff had already been approved for a extended medical leave.
- 21. On November 19, 2012, Eval received a letter from CCSD stating that he has been approved for a Medical Leave of Absence without pay per Clark County School District Regulation 4351 from October 23, 2012 through October 22, 2013.
- 22. Then inexplicitly, Plaintiff received a letter from CCSD dated December 5, 2012 saying that they were *not* going to modify the decision stated in CCSD's November 7, 2012 letter recommending his dismissal.
- 23. Plaintiff's disabilities could have been accommodated by not having him lift or push heavy objects and not having him walk or stand for extended periods of time or climb ladders.
- 24. Eval believes that his job as Head Custodian I could have been modified so that other custodians could have done these activities, as a accommodation to Plaintiff and his disabilities, without creating an undue hardship to CCSD.
- 25. Plaintiff further believes that he could have been given an alternative job with CCSD that met these restrictions, but Defendant failed to interact with Eval to see if a reasonable accommodation was possible by either job modification or finding him an alternative job.
- 26. Eval believes, alleges, and will prove at trial that Defendant has willfully failed to accommodate Plaintiff's disabilities, even though reasonable accommodations were possible without causing an undue hardship to CCSD.
- 27. Eval further believes, alleges, and will prove at trial that Defendant's decision to terminate Plaintiff was based on his disabilities and thus was in violation of the ADA.
- 28. As a direct, foreseeable, and legal result of the Defendant's disability discrimination including failure to accommodate Plaintiff's disabilities and terminating Eval's

employment because of his disabilities, Plaintiff has suffered, overall economic losses in earnings, bonuses, job benefits and expenses, in an amount to be proven at trial which exceeds the minimum jurisdictional limits of this Court.

- 29. As a further direct, foreseeable, and legal result of the Defendant's disability discrimination including failure to accommodate Plaintiff's disabilities and terminating Eval's employment because of his disabilities, Plaintiff has suffered indignity, mental anguish, humiliation, emotional distress, nervousness, tension, anxiety, recurring nightmares and change in sleep patterns, depression, inconvenience and loss of enjoyment of life and other pecuniary losses, the extent of which is not fully known at this time, for which Plaintiff seeks damages in an amount in excess of the minimum jurisdictional limits of the Court, also to be proven at the time of trial.
- 30. In acting as they did, Defendant knowingly, willfully, and intentionally acted in conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a sum according to proof at trial.
- 31. Plaintiff claims the damages alleged herein, together with prejudgment interest as provided by law, in a sum according to proof at trial.
- 32. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of his claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to proof at trial.

SECOND CAUSE OF ACTION

(For Interference and Retaliation

in Violation of the FMLA)

- 33. Plaintiff Eval incorporates the allegations set forth in paragraphs 1 through 32, inclusive, as if fully set forth herein.
- 34. This cause of action is brought pursuant to FMLA as it involves a claim by Plaintiff for interference and retaliation in taking Family Medical Leave which is governed by the FMLA.

- 35. As set forth above Plaintiff was put on Family Medical Leave from April 24, 2012 until July 18, 2012.
- 36. Eval was also given a Medical Leave of Absence without pay per Clark County School District Regulation 4351 from October 23, 2012 through October 22, 2013.
- 37. Plaintiff believes and will prove that CCSD terminated Eval because he requested multiple leaves of absence and they did not want to hold Plaintiff position as Head Custodian I open to he was able to return to work from his disabilities.
- 38. As a direct and proximate result of Defendant violating Plaintiff's rights under the FMLA, Plaintiff Eval has suffered loss of income, including but not limited to past and future wages, benefits, expenses, insurance, loss of back pay, front pay, other consequential damages, pain and suffering and other damages to be proven at trial.
- 39. Defendant's violation of Plaintiff's rights under the FMLA were with deliberate indifference to such rights or were willful, entitling Plaintiff to an award of liquidated damages equal to double the amount of his actual damages.
- 40. Plaintiff claims the damages alleged herein, together with prejudgment interest as provided by law, in a sum according to proof at trial.
- 41. Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of his claims. Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to proof at trial.

THIRD CAUSE OF ACTION

(For Tortious Discharge in Violation of State Public Policy -

Discharging Plaintiff for Filing a Worker's Compensation Claim)

- 42. Plaintiff Eval incorporates the allegations set forth in paragraphs 1 through 41, inclusive, as if fully set forth herein.
- 43. This cause of action is brought pursuant to the public policy of the State of Nevada making it against said policy to discharge or otherwise adversely affect an employee's employment in

retaliation for filing a claim for Worker's Compensation. See *Hansen v. Harrah's*, 675 P.2d 394 (1984); *Torre v. J.C. Penny Co.*, 916 F.Supp. 1029 (D. Nev. 1996).

- 44. As set forth above, on April 23, 2012 Eval suffered an injury to his left leg and left calf at work and thereafter was unable to return to full duty and instead required medical leave including a Workers' Compensation Leave of Absence until he was abruptly terminated, which became final on December 5, 2012.
- 45. Since the occurrence happened within the course and scope of Plaintiff's employment with CCSD, Plaintiff filed a worker's compensation claim.
- 46. Plaintiff believes, alleges, and will prove at trial that Defendant's decision to terminate Eval was because Plaintiff filed a worker's compensation claim and requested treatment and time off pursuant to the worker's compensation laws and other leave statutes.
- 47. As a direct, foreseeable, and legal result of the Defendant terminating Plaintiff's employment because he filed a worker's compensation claim, Eval has suffered and continues to suffer, substantial losses in earnings, bonuses, job benefits and expenses, in an amount to be proven at trial which exceeds the minimum jurisdictional limits of this Court.
- 48. As a direct, foreseeable, and legal result of the Defendant terminating Plaintiff's employment because he filed a worker's compensation claim, Plaintiff has suffered indignity, mental anguish, humiliation, emotional distress, nervousness, tension, anxiety, recurring nightmares, depression, inconvenience and loss of enjoyment of life and other pecuniary losses, in an amount to be proven at trial which exceeds the minimum jurisdictional limits of this Court.
- 49. In acting as they did, Defendant knowingly, willfully, and intentionally acted in conscious disregard of Plaintiff's rights. Their conduct was despicable, has subjected Plaintiff to oppression, and it warrants an award of punitive and exemplary damages in favor of Plaintiff, in a sum according to proof at trial.
- 50. Plaintiff claims the damages alleged herein, together with prejudgment interest as provided by law, in a sum according to proof at trial.

- 1		
1	51.	Plaintiff has incurred, and continues to incur, attorney's fees in the prosecution of
2	his claims.	Plaintiff therefore seeks an award of reasonable attorney's fees, in a sum according to
3	proof at tria	ıl.
4		PRAYER FOR RELIEF
5	WH	EREFORE, Plaintiff Eval demands judgment against Defendant as follows:
6	1.	Declaring that the acts and practices complained of here are a violation of ADA,
7	FMLA and Nevada public policy;	
8	2.	Enjoining and permanently restraining the violations by Defendant of the ADA,
9	FMLA and Nevada public policy;	
10	3.	For overall economic losses in earnings, bonuses, job benefits and expenses,
11	according to proof at time of trial;	
12 13	4.	For liquidated damages under the FMLA as an additional amount equal to the sum of
14	actual damages and interest;	
15	5.	For compensatory damages for mental and emotional distress, worry, indignity,
16	mental anxiety, mortification, depression, shame, grief, inconvenience and loss of enjoyment of life	
17	and other pecuniary losses, all to Plaintiff's damage in a sum to be shown at the time of trial;	
18	6.	For punitive damages;
19	7.	For attorney's fees and costs in an amount determined by the court to be reasonable;
20	8.	For pre-judgment interest on all damages; and
21	9.	For any other and further relief that the Court considers proper.
22		DEMAND FOR JURY TRIAL
23	Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by	
24	jury in this action.	
25	D.	ATED: 10/11/2014 LAW OFFICES OF MICHAEL P. BALABAN
26		
27	BY: /s/ Michael P. Balaban Michael P. Balaban	
28		LAW OFFICES OF MICHAEL P. BALABAN 10726 Del Rudini Street Las Vegas, NV 89141

EXHIBIT

Case 2:14-cv-01672-JCM-NJK Document 1 Filed 10/11/14 Page 10 of 10

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

Mark Eval Po Box 1764 Overton, NV 89040	From: Las Vegas Local Office 333 Las Vegas Blvd South Suite-8112 Las Vegas, NV 89101		
On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))			
EEOC Charge Nc. EEOC Representative	Telephone No.		
Michael Mendoza,			
487-2013-01012 Investigator	(702) 388-5057		
THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE	FOLLOWING REASON:		
The facts alleged in the charge fail to state a claim under an	of the statutes enforced by the EEOC.		
Your allegations did not involve a disability as defined by the	Americans With Disabilities Act		
The Respondent employs less than the required number of	employees or is not otherwise covered by the statutes.		
Your charge was not timely filed with EEOC; in other of discrimination to file your charge	vords, you waited too long after the date(s) of the alleged		
The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.			
The EEOC has adopted the findings of the state or local fair	employment practices agency that investigated this charge.		
Other (briefly state)			
- NOTICE OF SUIT			
Title VII, the Americans with Disabilities Act, the Genetic Information in Employment Act: This will be the only notice of You may file a lawsuit against the respondent(s) under federal law lawsuit must be filed WITHIN 90 DAYS of your receipt of this relost. (The time limit for filing suit based on a claim under state law receipts.)	f dismissal and of your right to sue that we will send you, based on this oharge in federal or state court. Your otice, or your right to sue based on this charge will be		
Equal Pay Act (EPA): EPA suits must be filed in federal or state calleged EPA underpayment. This means that backpay due for any	ourt within 2 years (3 years for willful violations) of the violations that occurred more than 2 years (3 years)		
before you file suit may not be collectible.	JUL 1 4 2014		
On betralf of	the Corpinission		
Enclosures(s) Amy Burkh Local Office I			

Thomas Rodriguez Executive manager, CCSD DIVERSITY & AFFIRMATIVE ACTION PROORAM 1415 Whipple Ave Logandale, NV 89021